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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd February 2008

No. 2256—li/1(BH)-48/2000(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th February 2008 in Industrial Dispute Case No. 3/2001 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Balasore Electrical Division, Balasore and their Workmen Shri M. Jena and 34 others represented through the O. S. E. B. Workers Union, Balasore was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 3 OF 2001

Dated the 16th February 2008

Present :

Shri Srikanta Nayak, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of Balasore Electrical Division, Balasore. . . First Party—Management

And

Their Workmen Shri M. Jena and 34 others . . . Second Party—Workmen
represented through the O. S. E. B.,
Workers Union, Balasore.

Appearances :

Shri R. C. Das, Authorised . . . For the First Party—Management
representative

Shri R. C. Satpathy, Authorised . . . For the Second Party—Workmen
Representative.

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 1883— li/1(BH)-48/2K/L.E., dated the 13th February 2001 :—

“Whether the actions of the management of M/s Balasore Electrical Division, Balasore in terminating the employment of Shri M. Jena and 34 others is legal and/or justified ? If not, to what relief they are entitled ?”

2. The case of the second party (hereinafter referred to as the ‘workmen’) is that they were working as N. M. Rs. under the Management from 1982 till 1992 and they were working continuously. They received a salary of Rs. 650 per month at the time of refusal of employment to them. In the year 1992 the management refused to provide them work though their juniors were regularised. So, they raised a dispute and on failure of conciliation the matter was referred to this Tribunal for adjudication.

3. The case of the first party-management is that the workmen were not continuously working for 240 days and no appointment order was issued to them. They worked on daily wages and without verifying records it is not possible to say the number of days they worked and it is the Section Officer and the Junior Engineer, who used to employ them. The N. M. Rs. who worked continuously were regularised as per the Regulation and Policy of the management. The case is not maintainable.

4. On the aforesaid pleadings of the parties, the following issue was framed :—

ISSUE

(i) Whether the action of the management of M/s Balasore Electrical Division, Balasore in terminating the employment of Shri M. Jena and 34 others is legal and/or justified ? If not, to what relief they are entitled ?

5. The workmen examined six witnesses in support of their case and the management examined one witness in support of its case.

6. *Issue No. (i)* —W. W. No. 1 deposed that he joined in the O.S.E.B., Jaleswar Division in the year 1978 and worked till 1992 when he was retrenched. Initially he was getting a salary of Rs. 150 per month but at the time of his retrenchment he was drawing a salary of Rs. 600 per month. The Section Officer and the S.D.O. granted certificates in his favour. The other workers also were working with him. No compensation was paid to them when they were retrenched.

W. W. Nos. 2, 3 and 5 deposed that they joined as N. M. Rs. in the year 1985 and continued till 1992 and they were retrenched without notice.

W. W. No. 4 deposed that he joined in the year 1984 and worked till 1992 as an N. M. R. and Ext. 1 is the certificate granted in his favour and he was retrenched without any reason.

W. W. No. 6 deposed that he retired as a Lineman in the year 1996. The present workmen were working as N. M. Rs. and the Lineman were supervising their work and Ext. 4 is the circular. No appointment order was issued to the N. M. Rs. and no order was passed while retrenching them from service. Ext. 1 is the certificate granted in favour of W. W. No. 4 which reveals that he was working from 1984 to 1992. It is true that the burden lies on the workmen to prove that he worked continuously for 240 days in a calendar year. In the decision reported in 2006 (108) FLR (S. C.) Page-213 (R. M. Yellati *Vrs.* Assistant Executive Engineer), their Lordships held that "the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment."

In the case in hand W. Ws. 1 to 5 all deposed that they were working continuously till the year 1992 and Ext. 1, the certificate and Ext. 3, the Muster Roll support the case of the workmen.

M. W. No. 1 also admitted that the workmen were working under the Section Officer. He used to maintain their records and submit the same to the Division Office. This admission of M. W. No. 1 clearly shows that the relevant documents are with the management but the management has not produced the same. M. W. No. 1 admitted in cross-examination that it is the Lineman who used to supervise their work as per the instruction of the Engineer and there is no record to show that the workmen had not worked for 240 days. He further admitted that the Linemen and the Junior Engineers are competent to say about the number of days worked by the second party workmen. But surprisingly no Junior Engineer or Lineman has been examined by the management. W. Ws. 1 to 6 all stood the test of cross-examination. Their version coupled with Exts. 1 and 3 establish that the workmen were working continuously for more than 240 days from the year 1982 to 1992.

7. Admittedly, the second party workmen were not paid any compensation as per the provisions of the Industrial Disputes Act nor any notice was issued to them. So, the action of the management is illegal one.

8. Neither it is stated in the claim statement nor it is stated by the claimants that they were not gainfully employed during the period of their retrenchment and the burden lies on them to prove the same. In the decision reported in 2006 (108) FLR (S.C.) Page 201 (U.P. State Brassware Corporation Ltd. and another *Vrs.* Udai Narain Panday), their Lordships held that "it is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman". In this case none of the workmen stated that they were not gainfully employed. So, they are not entitled to any back wages.

9. It is well settled that mere working for 240 days is not enough to direct for their re-employment but the Management in their Annual Revenue Requirement and Retail Supply Tariff Application for the Financial Year 2008-2009, which was filed along with an affidavit before the Orissa Electricity Regulatory Commission, Bhubaneswar on the 30th November 2007 has shown that the management intended to employ 300 employees in the current

year i. e., 2008-2009. So, under the circumstances it is proper to direct the management to re-employ the present workmen and accordingly, the second party workmen are held entitled for their re-employment under the first party management, but without any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK
16-2-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK
16-2-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
K. TRIPATHY
Under-Secretary to Government